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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/699,160	10/30/2003	Shigeharu Kanemoto	IS8-045	1621
21567	7590	05/15/2006	EXAMINER	
WELLS ST. JOHN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201			MAHAFKEY, KELLY J	
			ART UNIT	PAPER NUMBER

1761  
DATE MAILED: 05/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/699,160	<b>Applicant(s)</b> KANEMOTO ET AL.	
	<b>Examiner</b> Kelly Mahafkey	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |  |
|---|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/30/03</u> . | 6) <input type="checkbox"/> Other: ____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "at least surface layers" in claim 1 is a relative term which renders the claim indefinite. The term "a primary alpha-type conversion step for converting at least surface layers" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is not clear by the recitation of, "at least surface layers" as to how much of the product is treated. Further more, the specification provides no guidelines for assessing this term, on page 6 where the primary alpha-type conversion step is discussed the limitation is stated, "more or less than 70%" which includes 0-69.999 and 70.001-100%. This further renders the metes and bounds of the claims unclear because in claim 1 it is also recited, "a secondary alpha-type conversion for completely converting the rice grains"; it is unclear if this step is necessary when 100% of the rice grain can be converted in the primary alpha-type conversion step.

The term "a moisture content higher than a moisture content after final drying" in claim 1 is a relative term which renders the claim indefinite. The term "a moisture

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content higher than a moisture content after final drying" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear as to the specific moisture content that this limitation includes.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential steps, such omission amounting to a gap between the steps. See MPEP § 2172.01. The omitted steps are: the steps and conditions present in the process of alpha-type conversion. The specification describes this process as cooking or steaming (page 6), however no clear limitations are designed.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lewis et al. (5275836) in view of Walton (<http://waltonfeed.com/self/rice.html> 7/8/01 date obtained from <http://web.archive.org>) in view of Ogawn (Abstract Only JP92006330B).

Lewis et al. (Lewis) discloses of a process for treating brown rice including a milling step to remove a controlled portion of the bran layer, a (primary) immersing step for causing grains to absorb water, a (primary) alpha-type conversion step (i.e. steaming), and a (preliminary) drying step. Lewis teaches of removing the water form the immersing step before the alpha-type conversion step. Refer specifically to Abstract, Column 3 lines 5-20, and Claims 1, 7, and 8.

Lewis, however is silent to the amount of alpha-conversion that occurs, a polishing step, a secondary immersing step for causing the rice grains to absorb water, a secondary alpha-type conversion step, a separation-into-single grains step, and a final drying step as recited in claim 1.

Regarding the amount of alpha-conversion that occurs, it was notoriously well known in the art that an alpha-type conversion nutritionally increases the value of the rice product. It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a portion of conversion depending on the desired nutritional value of the final product.

Regarding a polishing step, Walton teaches that polishing decreases the cooking time of the rice, makes it easier to chew, and makes it more incorporation into other products easier (Pages 1 and 2). It was notoriously well known in the art at the time the invention was made that the process of parboiling the rice as taught by Lewis allows the

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rice to more easily be polished. It would have been obvious to polish the rice after parboiling in view of Walton. One would have been motivated to do so in order to gain the benefits of Walton in order to create a product which had the many benefits of polishing, such as a decreased cooking time, a product which was easier chewed, and a product which could easily be incorporated into other foods. Because Lewis teaches of a rice product and Walton teaches of a method of improving a rice product one would have a reasonable expectation of success from the combination. It would have been further obvious to one of ordinary skill in the art at the time the invention was made to include the process of polishing the rice after the process steps of Lewis in order to ease the difficulty of the operation.

Regarding a secondary immersing step for causing the rice grains to absorb water, a secondary alpha-type conversion step, and a final drying step as recited in claim 1 and Ogawn teaches of a method for making instant rice which keeps granular and has excellent restoration properties including the steps of immersing a polished rice in water to cause the grains to absorb the water (step a), a secondary and tertiary alpha-type conversion (steaming in steps b and d), and a final drying step (step c) (Abstract and Use). It would have been obvious to one of ordinary skill in the art at the time the invention was made to include a secondary immersing step for causing the rice grains to absorb water, a secondary alpha-type conversion step, and a final drying step in order to gains the benefits of the process as taught by Ogawn, such as a rice which keeps granular and has excellent restoration properties. Because Lewis in view of Walton teaches of a polished rice and because Ogawn teaches of a method of

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improving polished rice one would have a reasonable expectation of success from the combination.

Regarding a separation-into-single grains step, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a separation of the grains process. One would have been motivated to do so in order to obtain a final product that represented traditional rice and was dried and appeared in individual form.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

US 4687669 discloses of the process of an alpha-type conversion to polished rice.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly Mahafkey whose telephone number is (571) 272-2739. The examiner can normally be reached on Monday through Friday 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kelly Mahafkey  
Examiner  
Art Unit 1761



KEITH HENDRICKS  
PRIMARY EXAMINER